IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10277 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHUNILAL GOKALDAS DEWANI

Versus

DIVISION CONTROLLER

Appearance:

1. Special Civil Application No. 10277 of 1999

MR MUKESH H RATHOD for Petitioner

MR HARDIK C RAWAL for Respondent

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/03/2004

ORAL JUDGEMENT

The petitioner was the original applicant before the Labour Court, Junagadh in Reference (L.C.J.) No. 117 of 1995 which was in relation to dispute raised by him to challenge the order of termination of his service dated

8th January, 1992 and he had prayed for reinstatement on his original post and full backwages together with all incidental benefits. The Labour Court by judgment and award dated 6th March, 1999 has partly allowed the said Reference and has quashed and set aside the order terminating the service of the petitioner dated 1st August, 1992 and has directed the respondent to reinstate him on his original post with continuity of service together with all other incidental benefits, except the payment of backwages and also imposed punishment of stoppage of one annual increment with permanent effect.

2. From the record of the petition, it appears that the petitioner was working as conductor since about 10 years prior to the date of the incident and at the relevant time, he was discharging duty at Veraval depot at monthly salary of Rs.883=00 together with incidental perquisites. On 7th May, 1989, he was discharging duty in a bus which was specially hired for marriage purpose. It was to ply between Kodinar and Veraval. The bus was checked on this route by the checking squad and upon counting the passengers it was found that there were eight passengers in excess. As per the permit, the bus was required to carry 60 passengers. As against that, it was found that there were 380 passengers. It was also found that the petitioner had collected a sum of Rs.300=00 from the passengers and it made a note on a plain paper regarding the receipt of the amount. It also transpires that he was required to issue proper receipt for acceptance of the money but that was not done. According to the respondent, the petitioner had collected this amount and had not adopted regular procedure and had merely prepared a rough writing in respect thereto. It was alleged that he would have destroyed such writing after reaching the destination and would have pocketed the amount received for the excess number of passengers. Due investigation was made and the report was submitted. Ultimately, order terminating his service dated 8th January, 1992 came to be passed, which he had ultimately challenged in the proceedings before the Labour Court.

2.1. At the hearing of the case before the Labour Court, both the parties have produced evidence. On appreciation of material produced before it, the Labour Court has come to the conclusion that no serious offence was committed by the petitioner, requiring the authorities to pass the order of termination of service of the petitioner. In the opinion of the Labour Court, only minor irregularity was committed by the petitioner for which imposition of punishment of stoppage of one annual increment with permanent effect was adequate.

However, the Labour Court has also come to the conclusion that on the question of payment of backwages no case was made out by the petitioner for grant of backwages and therefore, order denying backwages has been passed. The backwages appear to have been refused solely on the ground that the petitioner had not made any attempt to find out suitable job for him after he was dismissed from the service of the respondent and secondly that his son was doing some business.

3. Having being aggrieved by the said judgment and award, the petitioner has now approached this Court to challenge it to the extent it denies payment of backwages as well as imposition of penalty of stoppage of one annual increment with permanent effect.

3.1. Mr. M. H. Rathod learned advocate appearing for the petitioner has submitted that considering the facts and circumstances on record, the impugned award of the Labour Court is absolutely erroneous inasmuch as the Labour Court has at one stroke of pen imposed two punishments causing substantial monetary loss to the petitioner, namely; (1) denial of backwages; (2) stoppage of one annual increment with permanent effect. He has further submitted that considering the fact that no charge of misappropriation of money had been proved by the respondent. There was nothing so serious that he could be visited with two punishments. According to him, even if the case of the respondent is taken to be true, it would at the most show that the petitioner had committed some irregularities but he had not committed any act of misappropriation; in other words he had slightly deviated from the established practice of the respondent.

3.2. As against that, Mr. Hardik Raval learned advocate appearing for the respondent has submitted that the impugned award of the Labour Court is just and proper and it may not be interfered with by this Court. He has further submitted that even the punishment which is already imposed is very lenient inasmuch as considering the history of the petitioner, he was required to be removed from the service. Lastly, he has submitted that when the Labour Court has exercised its jurisdiction under Section 11 (A) of the Industrial Dispute Act, it was now not necessary for this Court to again reappreciate the material on record and to come to a different conclusion.

4. Having gone through the record of this petition as well as having carefully considered the submissions of

the rival parties, it is very clear that the petitioner had not deliberately or with any dishonest intention committed the alleged default. In fact, it appears that he had made a note on a plain paper acknowledging the receipt of the amount received. Further, the witness of the department also confirms this fact in his evidence. Thus, there is no hesitation on my part to hold that on this count, the judgment of the Labour Court is just and proper. In other words, the Labour Court has rightly held that the allegation with regard to malpractice committed by the petitioner has not been proved.

4.1. The second question is whether on committing a minor irregularity by the petitioner, punishment of stoppage of one annual increment with permanent effect could be passed and also deny payment of backwages. Considering the overall factual picture emerging from the proceedings of the Labour Court, it appears that so far as the denial of payment of backwages is concerned, it is not by way of punishment. However, it is not in dispute that while denying backwages, the Labour Court has referred to the evidence of the petitioner in which he has stated that he had not made any effort to find out job for him. The Labour Court has further taken into consideration that petitioner's son was doing some business. However these are not the only factors which could be kept in view alone for denying the backwages. In fact, in the said evidence, the petitioner has categorically stated that he was willing to work with the respondent, but it was the respondent which had not permitted him to do so. The petitioner, therefore, had to take recourse to the legal remedy. In fact, initially, he had filed Civil Suit in month of January, 1992. Ultimately, the said Suit was disposed of as not maintainable vide order dated 31st January, 1995. The petitioner was, therefore, required to approach the Labour Court under the provisions of the Industrial Disputes Act.

4.2. When it clearly appears that the petitioner had served the department for considerable time and when it was found that allegation that was levelled against him was not true, it was incumbent upon the Labour Court to see that his service was restored and the incidental benefits be paid to him. As stated above, the Labour Court has already passed order directing reinstatement, but has denied backwages with the aforesaid reasons namely that the petitioner's son was doing business and secondly that he had not made any attempt to find out a suitable job. When the petitioner has categorically stated in his evidence that he was willing to work but it

was denied to him by the respondent, no fault can be found with the petitioner. He, therefore, becomes entitled to receive backwages. The next question that is required to be decided is to what extent the same could be made available to him. As stated above, in the year 1992, around January or February, of the said year, he had approached Civil Court by filing Civil Suit No. 17 of 1992. The said Suit came be disposed of on 31st January, 1995. Thus the petitioner prosecuted wrong remedy, may be a bona fide mistake, but for these three years, the respondent cannot be saddled with the liability of payment of backwages. Further when the petitioner states that he was not doing any job, such statement cannot be accepted on its face value because normally every person would strive to generate some income to maintain himself and the petitioner cannot be an exception to such Rule. It is the greed of an average person which may prompt him to deny this fact. In the event, award of 50% of backwages for the period he has remained out of job after the order of dismissal passed by the respondent except for the period between January, 1992 and January, 1995, same should be awarded. So far as the proportionality of punishment is concerned, considering the fact the Labour Court has already exercised its jurisdiction under Section 11 (A) of the Industrial Disputes Act, this Court will not enter into that question again.

In view of the aforesaid, this petition is partly allowed. The respondent is directed to pay to the petitioner backwages at the rate of 50% from the date of order of termination till reinstatement i.e. 23rd August, 1999 except for the period between January 1992 and 31st January, 1995. It is stated by Mr. Rathod learned advocate for the petitioner that the petitioner has now retired on 31st May 2002. However, respondent is directed to make payment of backwages in accordance with the aforesaid direction on or before 31st July, 2004. In case of any delay thereafter, the respondent will be required to pay the amount together with 12% interest thereon for the delayed payment. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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